

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 7, 2008

STATE OF TENNESSEE v. JOSEPH GUNTER

Direct Appeal from the Criminal Court for Fentress County

No. 8140 E. Shayne Sexton, Judge

No. M2008-00675-CCA-R3-CD - Filed June 12, 2009

The Defendant-Appellant, Joseph Gunter (“Gunter”), was convicted by a Fentress County jury of first degree felony murder and especially aggravated robbery, a Class A felony. He received a life sentence without parole for the first degree felony murder conviction and a twenty-year sentence for the aggravated robbery conviction to be served concurrently in the Tennessee Department of Correction. On appeal, Gunter argues: (1) he was denied a fair trial because of misconduct by two different jurors, (2) he was denied a fair trial because of the trial court’s rulings on certain evidentiary issues and because of the trial court’s negative comments during the trial, (3) he was denied due process because of the State’s failure to disclose and preserve new and potentially exculpatory evidence, (4) he was denied due process because of the State’s failure to test the murder weapon and other items for fingerprints, and (5) he was denied a fair trial because of the cumulative effect of the errors in this case. Upon review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

CAMILLE R. McMULLEN, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Martha J. Yoakum, District Public Defender; Leif E. Jeffers, Assistant Public Defender, Jackson, Tennessee (at trial) and Kevin R. Bryant, Crossville, Tennessee (on appeal), for the defendant-appellant, Joseph Gunter.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; William Paul Phillips, District Attorney General; and John W. Galloway, Jr., Deputy District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

We have restated the facts of this case from this court’s opinion in Gunter’s first direct appeal:

This case involves the bludgeoning death of the defendant's mother, Wanda Gunter, in her Jamestown home. On Sunday morning, February 4, 2001, several of the victim's relatives, concerned because they had been unable to reach the victim all weekend, went to her apartment to check on her. When the apartment manager let them inside, one of them found the victim lying face down in a pool of blood on the floor of her bedroom with a bloody hammer beside her. The subsequent autopsy revealed she had died of blunt head trauma, with at least four separate injuries to her head caused by an object similar to a hammer. Although a number of empty jewelry boxes were scattered throughout the room and it appeared as if the victim's purse had been emptied, the victim's apartment was locked when her family arrived.

Meanwhile, on the previous day, the twenty-one-year-old defendant, who had been living with the victim, had aroused the suspicions of a Sevierville pawn shop owner by his repeated trips into the store to pawn jewelry. When Sevierville police officers responded to the scene, they found the defendant in another pawn shop nearby while his girlfriend and her children waited in the victim's vehicle parked outside. Initially arrested on an outstanding community corrections violation warrant, the defendant was questioned the next day about the murder and gave an initial statement in which he claimed the victim had planned to spend the weekend with his older brother and his children and had given him permission to borrow her vehicle while she was away. In that statement, the defendant said that the pawned jewelry was part of a collection he had been accumulating over the previous two or three years. However, when later informed that the victim had been found dead in her apartment with some of her jewelry missing, the defendant admitted he had stolen some of her jewelry and said that she had been with a man she had just met from Alcoholics Anonymous when he last saw her on Friday morning.

Later that day, the defendant, who had been told only that the victim had died of head injuries, gave another statement in which he confessed that he had hit the victim once in the back of the head with a hammer. He insisted, however, that the victim was already grievously wounded from self-inflicted hammer wounds at the time and implied that the blow he delivered was intended to end her suffering. According to the defendant, the victim had cancer, was taking a medication that caused her to hallucinate, and had been acting strangely all week. His statement reads in pertinent part:

While in the living room, I hea[r]d a pop coming from the bedroom. While I was going toward the bedroom where mom was suppose [sic] to be sleeping, I heard another pop and mom trying to say something. As I entered the bedroom, I seen [sic] mom falling toward her right hand side. Mom fell into the dresser. . . . I seen [sic] mom bleeding from the back of her head toward the left side. She was holding the hammer in her left hand. When she fell, she fell face down. . . . After she fell, mom was gasping for air. Mom was pooping on herself and farting. Mom was shaking. She had a hold

[sic] of the hammer still trying to hit herself. I fell back into the wall between the closet door and bedroom door where I had left the hammer. I remember just seeing flashes. I'm not sure if I passed out or not. I grabbed the hammer from mom's hand. I had to pry her four fingers from around the hammer. After I got it loose from her hand, mom was still moving her hand at her head like she was still trying to hit herself. I took the hammer and hit mom in the back of the head one time. Mom was still trying to gasp for air. I cannot remember if I tossed the hammer or what, but I don't remember coming out of the bedroom with it. I stood there for a minute. I thought I would call my brothers and tell them what had happened but I thought they wouldn't believe me. I hit mom once because she was gurgling and twitching. Her head was pouring blood so bad. I thought I needed to get away. I decided to take mom's car, which she had previously given me the keys to borrow. When I got into the car, the gas hand was almost on "E" for empty. I went back inside the apartment and looked in mom's purse for money. I had gotten the purse from beside her bed. It fell off the bed after I was looking through it for some money. I had previously given \$600.00 (five \$100 bills and five \$20 bills) to her. I didn't find any money in her purse. Instead, I took some jewelry [sic] from mom's jewelry [sic] case on her dresser.

The defendant stated he had stopped at several pawn shops to pawn some of the jewelry in order to obtain expense money for a weekend trip to Pigeon Forge with his girlfriend and her children.

At trial, the defendant acknowledged he had signed the statement but claimed that the words had been supplied and written by the Tennessee Bureau of Investigation ("TBI") agent who conducted the interview. The defendant testified, instead, that he had returned to the victim's apartment after a brief absence on Friday morning to find her "twitching and quivering" as she lay dying on her bedroom floor. He conceded he might have pushed the hammer to the side as he knelt beside the victim but he insisted that he had never hit her with the hammer. The defendant explained that he had taken the victim's jewelry and fled because he feared that he would be blamed for her murder.

In an effort to bolster the defendant's testimony and to create reasonable doubt about his guilt for the murder, defense counsel attempted to show that the manager of the victim's apartment complex, who had since been indicted for the murder of another resident, was the real culprit in the crime. To that end, he elicited testimony from various witnesses, including the defendant, about arguments the victim had been having with the apartment manager over the repair of her apartment's heat pump and the petition that the victim had circulated shortly before her death asking that the manager be replaced. Notwithstanding defense counsel's efforts, the jury convicted the defendant of both especially aggravated robbery and

felony murder. The trial court entered the judgments on March 14, 2002, and on May 21, 2004, overruled the defendant's motion for a new trial. On June 21, 2004, the defendant filed a notice of appeal to this court.

State v. Joseph Gunter, No. M2004-01519-CCA-R3-CD, 2005 WL 2662575, at *3 (Tenn. Crim. App., at Nashville, Oct. 19, 2005).

Gunter's trial counsel filed an untimely motion for a new trial in this case. In Gunter's first direct appeal, this court dismissed his appeal due to the untimely filing of his motion for a new trial. See Joseph Gunter, 2005 WL 2662575, at *4. Gunter then filed a timely pro se petition for post-conviction relief and an amended petition for post-conviction relief with the assistance of appointed counsel, and the post-conviction court granted a delayed direct appeal on February 12, 2007. Gunter's appointed appellate counsel failed to file a timely notice of appeal in this case. However, on April 3, 2008, this court waived the timely filing of the notice of appeal document in the interest of justice pursuant to Rule 4(a) of the Tennessee Rules of Appellate Procedure and gave counsel fifteen days from the filing date of the court's order to file a notice of appeal. On April 7, 2008, appointed appellate counsel filed the notice of appeal in this case.

I. Juror Misconduct. Gunter argues that the misconduct of two jurors violated his Sixth Amendment right to a fair trial. First, he asserts that juror Robert Baz improperly contacted Det. Gary Ledbetter, a witness for the State, prior to the second day of trial and then tainted the other empaneled jurors by discussing his conversation with Det. Ledbetter. Citing State v. Akins, 867 S.W.2d 350, 355 (Tenn. Crim. App. 1993), he argues that because of Baz's conduct, a presumption of prejudice arose. Additionally, citing State v. Sammy D. Childers, No. W2002-00006-CCA-R3-CD, 2003 WL 214444, at *3 (Tenn. Crim. App., at Jackson, Jan. 30, 2003), he contends that even though this court has held that the presumption of prejudice "may be dispelled by an absence of actual favor or partiality by the juror," the facts show Baz's actual partiality for the prosecution, which was not dispelled by any evidence offered by the State. Second, Gunter claims that both juror Iva Mitchell and the State failed to disclose during trial that Mitchell's husband had been a victim of an earlier crime committed by Gunter. Citing State v. Pamplin, 138 S.W.3d 283, 287 (Tenn. Crim. App. 2003), Gunter claims that Mitchell's failure to exercise reasonable care in responding to questions in voir dire and the State's failure to disclose prejudicial information that the State knew or reasonably should have known about Mitchell's disqualification created a "suspicion of impartiality."

In response, the State contends that Gunter failed to show how the jury was prejudiced against him. It asserts that Det. Ledbetter did not provide any prejudicial information to Baz, and there is no proof to support Gunter's allegation that Baz tainted the rest of the jury before being removed. Additionally, the State claims that Gunter has failed to make a prima facie showing that Iva Mitchell willfully concealed the fact that Gunter had previously passed a forged check at her husband's business.

A. Juror Robert Baz. During voir dire, juror Robert Baz was asked by defense counsel whether his job at the telephone company would make him partial to either party:

[DEFENSE COUNSEL]: You work for the telephone company?

MR. BAZ: Yes, sir.

[DEFENSE COUNSEL]: Is there anything about your employment – I know – I mean, it's not actually a government agency, I guess, but [is there] anything about working there [that] tend[s] to make you more or less sympathetic toward the government or anything like that?

MR. BAZ: No, sir.

During Gunter's trial, defense counsel told the trial court that Gunter observed Baz talking to Det. Ledbetter, a witness for the State, in the dispatcher's office the morning before the second day of trial. The trial court then told defense counsel that the proper remedy would depend on the remedy defense counsel felt was appropriate. The trial court determined that it was proper to ask Baz about his conversation with Det. Ledbetter, and then defense counsel could request that Baz be excused or could request a mistrial.

The trial court questioned Baz outside the presence of the other jurors. The court asked Baz if he had talked to Det. Ledbetter about the trial, and Baz responded, "We didn't discuss nothing [sic] as far as the case was concerned, we just – no, sir, not anything that would have anything to do with that particular case, no, sir[.]" Baz said that he asked Det. Ledbetter about the marijuana they had on display in the dispatcher's office. Baz also said that he told Det. Ledbetter that "it was an enjoyment to be there as far as to listen to both lawyers and listen to them talk and stuff[.]" Baz told the trial court that he spent fifteen minutes talking to Det. Ledbetter prior to the second day of Gunter's trial. Baz acknowledged seeing Gunter enter the dispatcher's office. At the conclusion of the questioning, the court told Baz to return to the room where the rest of the jurors were located. After a recess, defense counsel requested that Baz be excused. The State did not object to Baz's removal from the jury:

[W]e don't object to that. That's probably certainly the safe thing to do, and I don't think from what we've heard that there is any, you know, intentional impropriety, but there is certainly the appearance of it and that's certainly the safe thing to do, and whatever the defendant wants to do in this regard, we're satisfied with that.

Then defense counsel said that his only remaining worry was whether Baz had talked to the other jurors about the questioning by the trial court. The court asked Baz whether he talked to the other jurors about the inquiries made by the court concerning Baz's interaction with Det. Ledbetter, and Baz replied:

They – some of them asked me, said, you know, did you – were you called on the stand and stuff, and I said no. I said I was – I just – I didn't discuss – I told them that I was in the Fentress County jailhouse – jail room this morning in the sheriff's department, and they wanted to know what was said down there.

Now, I didn't say anything about nothing about [sic] being said or discussed or anything like that, you know. I said, you know, I was down there and I don't guess I – I said, I should have not been down there, but I said, I didn't know I wasn't supposed to be down there.

When defense counsel asked Baz what he said to the other jurors after being questioned by the trial court regarding his conversation with Det. Ledbetter, he stated:

I just told [the other jurors], I said, "Evidently, I was not supposed to be at the sheriff's department this morning," and I said, "I didn't know that," and I said, Mr. Joe, I said, "Evidently, when [Gunter] came through he saw me, and he told his attorney that I was down there and [he] probably wanted to know why I was down there." And I said, "I didn't know I wasn't supposed to be down there." I said, "The guys are my friends at the Fentress County sheriff's department. I deal with them [because of my job with the telephone company] through the phone, office, through the fire department," and I said, "I just didn't know I wasn't supposed to be there at that particular time. But if I've caused a problem, I apologize and I'll be glad to step down, if you think that I'll hurt your case in some way."

The court excused Baz from the jury. Defense counsel then moved for a mistrial. The State acknowledged that the jury could have reached the conclusion from Baz's comments that Gunter was in custody; however, the State said that the jury had already heard testimony that Gunter had originally been arrested for violating his probation, so the jury may have already inferred that Gunter was in custody. The State suggested that the trial court give a curative instruction to the jury before granting a mistrial. Defense counsel stated that he was more concerned that the jurors would believe that he was "causing some problems" because Gunter saw Baz talking to Det. Ledbetter.

The trial court stated that it was "not going to assume prejudice" to the other jurors, and added:

What I'm inclined to do is talk with this Jury, bring them in here, put it on the record, go through a curative instruction, and then think: Mistrial, under advisement. Let's just keep this thing going, and I can grant a mistrial before we ever start deliberation, if I thought it was appropriate, but I'm – and you know, at this – I don't know what's going to come up in the proof.

The court asked defense counsel if he wanted the jury to be instructed that "whether [Gunter's] residing at home, at an uncle's house or in the county jail doesn't matter as far as this trial is concerned." Defense counsel said that such an instruction "would be appropriate."

The trial court gave the jury curative instructions. First, the court reminded the jury that they are not to discuss the case with anyone. Second, the court told the jury to "avoid the appearance of impropriety" by "avoid[ing] any contact with anyone you don't have to talk to[.]" Third, the court talked about the fact that Baz was removed from the jury:

And I want you to understand also that the reason that Mr. Baz was excused was not necessarily because of one or the other party making the request. This court conducted the inquiry. I asked the questions, I decided on my own, you know, after discussion with counsel that Mr. Baz should be excused. So any – please don't infer that one or the other side of this case had Mr. Baz thrown out because they weren't happy with him. That's just not how it happened. I felt like it was appropriate to let him go. . . .

Any communication that Mr. Baz had with you concerning the inquiry, you're not to consider that. . . .

Please remember, you're going to try this case based on the evidence. You're going to hear the proof, you've seen all these exhibits come in, and that's how you should make your decision, not necessarily what you hear extraneous[ly].

The court told the jury that it was going to try to avoid “a situation where we've got to call on a hotel and put you up for a while. . . . I think we can do this case without holding you up and keeping you away from everything you need to be doing[.]” Finally the trial court emphasized that “where [Gunter] resides is of no consequence to this trial. Whether or not he's living with a family member, if he were in – you know, staying in a hotel, in the county jail, wherever it is, please understand, that is of no consequence to this case[.]” The jurors indicated that they understood the court's instructions.

During the motion for a new trial hearing, defense counsel explained why he was requesting a new trial based on Mr. Baz's removal from the jury:

[DEFENSE COUNSEL]: [W]hat our point here is, is that . . . the jury knew who had brought up the issue, who as raising the issue and as a result of that, one of their own had been kicked off the jury and that if anything else like that happened, they were gonna have some grave consequences.

THE COURT: [Defense counsel –]

[DEFENSE COUNSEL]: Now, you know, while all that may be true, the problem from where we're sitting is that [it] all turns into our fault somehow. We raised it. And what we're concerned about is that the jury would transfer – you know, I don't think [there is] anybody sitting in the jury box feeling bad at the judge over a ruling or over things like that, but they know who was causing the problem

The trial court then responded, “I don't think there is anything else [that] could [have been] done in any way, and I don't find that there is any prejudice by Mr. Baz's situation.”

B. Juror Iva Mitchell. Juror Iva Mitchell testified at the hearing on Gunter's motion for a new trial that her husband owned the Tru-Test Service Station. Mitchell stated that she did not know Gunter prior to trial and did not receive any extraneous information about Gunter during his

trial. Mitchell said that during trial she did not know that Gunter had been convicted for passing a forged check at her husband's gas station, and she never talked to her husband about this issue. She said that either she or her husband completed the warrants for individuals who had written bad checks at the gas station. Mitchell testified that she had no idea that the defendant on trial for first degree murder was the same individual that passed a forged check at her husband's store until an attorney for the State notified her of this fact one week prior to her testimony at the motion for a new trial hearing.

During the motion for a new trial hearing, the trial court and the parties discussed whether the fact that Gunter had been convicted for passing a forged check at Mitchell's husband's business affected the trial:

THE COURT: Let me give you my thinking on this one right now. There is some very specific law concerning possible jury misconduct or jury misinformation during voir dire or even just jury problems in a verdict, and there's different standards based on what the allegations are. Let's make sure I understand.

We're not saying that Ms. Mitchell deliberately withheld any information; is that right? I mean, I don't see any evidence of that.

[DEFENSE COUNSEL]: Well, I'm sure that's her testimony and we've not rebutted it with anything. I guess it could be a question –

THE COURT: So, if there is no evidence – so, no one is saying that she walked in with the idea to defraud the Court concerning possible knowledge of Mr. Gunter. I mean, there is a proper affectum versus defectum. I don't think we get that far. But this Court – the remedies – I'm speaking off the top of my head now. I'm finding – I'm not hearing or seeing any evidence that suggests she tried to mislead anyone during voir dire or throughout the trial. You're not contending that that occurred, are you?

[DEFENSE COUNSEL]: No. And I guess – and what we would ask the Court to do is – it's more of a reasonableness test as to whether – I mean, certainly, her testimony is here and we're going to take it at its face value, which is – you know, I think she's under oath and I believe she's probably tried to tell the Court the truth.

I think our – what concerns us certainly, and I think what should be a concern to the Court, is . . . this is a situation where . . . she, in fact, is a party to another case [where Gunter is the defendant]. . . . [W]e're not alleging any kind of personal vendetta or personal action on her part to make this happen. But what we think is important is that this is something that even if it was not known to her, then it reasonably should have been known at some point through the trial, either to her or to the State. . . . [T]hey are the State and they know what prosecutions are going on and what are not.

[Gunter], in fact, I believe was originally arrested in this case on the corrections violation which stem[med] from that conviction [associated with the Mitchell's gas station]. So, I mean, it has a direct bearing on the case. Whether she actually knew or whether she reasonably should have known or the State reasonably should have known, I think, is our contention.

THE COURT: I understand. Okay.

[DEFENSE COUNSEL]: And of course, we're asking the Court based on that to grant a new trial. That's the only way that we can see to remedy a problem like that.

Ultimately, the court ruled that it would not grant a new trial on this issue:

I believe the Court would have to find some type of – some type of preconceived notion by Ms. Mitchell to come in and do harm to this proceeding. That has not been shown in any form, so Ms. Mitchell's involvement in a case of Mr. Gunter's previous to this has been – is not connected to her action as a juror in my opinion.

C. Analysis. A defendant's right to a fair trial is guaranteed by the Sixth Amendment to the United States Constitution and by article I, section 9 of the Tennessee Constitution. Additionally, this court has said that every defendant is assured “a trial by a jury free of . . . disqualification on account of some bias or partiality toward one side or the other of the litigation.” Akins, 867 S.W.2d at 354 (quoting Toombs v. State, 270 S.W.2d 649, 650 (Tenn. 1954)).

Although challenges to juror qualifications fall into four different categories, only two of the four categories are relevant to this case.¹ See Akins, 867 S.W.2d at 355. The two categories pertaining to this case are propter defectum and propter affectum. Propter defectum, which means “on account of some defect,” refers to “personal objections, as alienage, infancy, lack of statutory requirements[.]” Durham v. State, 188 S.W.2d 555, 559 (Tenn. 1945) (quoting 1 Bouv. Law Dict., Rawle's Third Revision, page 451). Propter affectum, which means “on account of partiality,” refers to “some bias or partiality either actually shown to exist or presumed to exist from circumstances.” Id. (quoting 1 Bouv. Law Dict., Rawle's Third Revision, page 451). “Propter defectum challenges must be made prior to verdict, but propter affectum challenges may be made after verdict.” Akins, 867 S.W.2d at 355 (citing State v. Furlough, 797 S.W.2d 631, 652 (Tenn. Crim. App. 1990). “When a juror willfully conceals (or fails to disclose) information on voir dire which reflects on the juror's lack of impartiality, a presumption of prejudice arises.” Id. (citing Durham, 188 S.W.2d at 559).

Tennessee Rule of Evidence 606(b) states:

Inquiry Into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement

¹The two categories inapplicable to this case are propter honoris respectum, which means “on account of rank,” and propter delictum, which means “on account of conviction.”

occurring during the course of the jury's deliberations or to the effect of anything upon any juror's mind or emotions as influencing that juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes, except that a juror may testify on the question of whether extraneous prejudicial information was improperly brought to the jury's attention, whether any outside influence was improperly brought to bear upon any juror, or whether the jurors agreed in advance to be bound by a quotient or gambling verdict without further discussion; nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Tenn. R. Evid. 606(b) (emphasis added). In short, Rule 606(b) "bars juror testimony and affidavits concerning jury deliberations but permits testimony and affidavits pertaining to extraneous prejudicial information, outside influence, and agreed quotient verdicts." Akins, 867 S.W.2d at 355 (citing Tenn. R. Evid. 606(b)).

"Extraneous information is information coming from a source outside the jury." State v. Clayton, 131 S.W.3d 475, 480 (Tenn. Crim. App. 2003) (citing State v. Coker, 746 S.W.2d 167, 171 (Tenn. 1987); Neil P. Cohen et al., Tennessee Law of Evidence, § 6.06[4], at 6-51 (4th ed. 2000)). This court has distinguished external influences from internal influences:

External influences which could warrant a new trial if found to be prejudicial include: (1) exposure to news items about the trial; (2) consideration of facts not admitted in evidence, and (3) communications with non-jurors about the case. Internal influences that are not grounds to overturn a verdict include: (1) discussions among jurors; (2) intimidation or harassment of one juror by another; (3) a juror's personal experiences not directly related to the litigation, and (4) a juror's subjective thoughts, fears, and emotions.

State v. Carruthers, 145 S.W.3d 85, 92 (Tenn. Crim. App. 2003) (citing Caldararo v. Vanderbilt University, 794 S.W.2d 738, 742 (Tenn. Ct. App. 1990) (citations omitted)).

"After establishing that the challenge may be maintained, a defendant bears the burden of providing a prima facie case of bias or partiality." Akins, 867 S.W.2d at 355 (citing State v. Taylor, 669 S.W.2d 694, 700 (Tenn. Crim. App. 1983). If a juror acts willfully in concealing or failing to disclose information during voir dire "which reflects on the juror's lack of impartiality, a presumption of prejudice arises." Id. (citing Durham, 188 S.W.2d at 555). However, this presumption of prejudice "may in some cases be dispelled by an absence of actual partiality." Id. at 357.

In this case, the jury was not sequestered. This court has previously established the appropriate standard for a jury that is not sequestered:

When the jury is not sequestered, the defendant has the burden of showing something more than mere interactions between the jury and third persons. The defendant must instead establish that as the result of a juror's contact with a third person some

extraneous prejudicial information, fact or opinion was imported to one or more jurors or some outside improper influence was brought to bear on one or more jurors.

State v. Clinton, 754 S.W.2d 100, 103 (Tenn. Crim. App. 1988) (internal citation and quotation omitted) (emphasis in original) (citing State v. Blackwell, 664 S.W.2d 686, 689 (Tenn.1984)).

Here, the issues involving jurors Robert Baz and Iva Mitchell can be characterized as proper affectum challenges. Since the jury was not sequestered, the proper question regarding Baz is whether he imparted extraneous prejudicial information obtained from Det. Ledbetter to one or more of the jurors. See Clinton, 754 S.W.2d at 103. The record shows that although Baz did have improper contact with Det. Ledbetter, it does not show that Baz actually received extraneous prejudicial information from this contact. Gunter also makes an argument that Baz was inherently partial to the prosecution; however, the record does not show that Baz's alleged partiality to the State rose to the level of willful concealment which would trigger a presumption of prejudice. See Akins, 867 S.W.2d at 355. Regardless of whether such partiality existed, Baz was removed from the jury prior to jury deliberations, and there is no evidence in the record that he prejudiced the other jurors before his removal. Similarly, the record shows that Mitchell did not possess or willfully conceal extraneous prejudicial information while she was a juror. The record shows that she did not become aware that Gunter had previously passed a forged check at her husband's business until after his trial. See id. It is significant that defense counsel presented no evidence to counter Mitchell's testimony regarding her lack of knowledge of Gunter's previous offense. Accordingly, we conclude that Gunter is not entitled to relief on this issue.

II. Evidentiary Rulings. Gunter argues that his Sixth Amendment right to a fair trial was violated because of the trial court's rulings on several evidentiary issues. He also contends that the trial court's negative comments violated his right to a fair trial.

We generally review a trial court's ruling on the admissibility of evidence for an abuse of discretion. State v. Taylor, 240 S.W.3d 789, 794 (Tenn. 2007), no cert. filed. On appeal, we conclude that a court abused its discretion when "it appears that a trial court applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining." State v. Shuck, 953 S.W.2d 662, 669 (Tenn. 1997) (citing Ballard v. Herzke, 924 S.W.2d 652, 661 (Tenn. 1996)).

A. Tennessee Rule of Evidence 103. Regarding Rule 103, Gunter asserts that the trial court erred in preventing defense counsel from questioning Agent Charlie Scott about his contact with Ute Ferrell, another suspect in this case, thereby preventing him from presenting the jury with evidence that "there was at least one other real suspect out there with the motive, opportunity, and capability to have committed the crime." Furthermore, citing State v. Dale L. Courtney, No. 03C01-9406-CR-00195, 1995 WL 221646, at *2 (Tenn. Crim. App., at Knoxville, Apr. 11, 1995), Gunter argues that the objecting party has an obligation to state the basis for its objection. Finally, he contends that these errors require a reversal of his conviction. In response, the State first contends that Gunter is not entitled to relief on this issue because the defense failed to make an offer of proof regarding the substance of Agent Scott's testimony. Second, the State argues that this court's opinion from Gunter's first appeal makes it clear that the defense adequately presented its theory that

Ferrell was responsible for the victim's murder in this case without requiring the testimony from Agent Scott regarding his interview with Ferrell. The State cites the following excerpt from Gunter's first direct appeal for the proposition that despite the exclusion of this evidence, Gunter adequately presented his theory that Ferrell murdered the victim in his case:

In an effort to bolster the defendant's testimony and to create reasonable doubt about his guilt for the murder, defense counsel attempted to show that the manager of the victim's apartment complex, who had since been indicted for the murder of another resident, was the real culprit in the crime. To that end, he elicited testimony from various witnesses, including the defendant, about arguments the victim had been having with the apartment manager over the repair of her apartment's heat pump and the petition that the victim had circulated shortly before her death asking that the manager be replaced. Notwithstanding defense counsel's efforts, the jury convicted the defendant of both especially aggravated robbery and felony murder.

Joseph Gunter, 2005 WL 2662575, at *3.

During trial defense counsel asked Agent Scott the following questions about his interviews with Ute Ferrell, the manager of the victim's apartment complex:

Q. How many times did you interview Ute Ferrell?

A. Twice. You mean during this investigation?

Q. Right.

A. I didn't interview her at all.

Q. Okay. In what context did you interview her?

A. In connection –

[THE STATE]: Objection, your Honor.

THE COURT: Sustain the objection.

Q. Did anybody mention to you that Ute Ferrell's name had come up during this investigation?

A. One person mentioned her name to me.

Q. Was she there at the scene at any time while you were there?

A. Not while I was there.

Q. Nobody talked to her related to this case?

A. No.

Q. Now, it's true that in one of Mr. Gunter's statements to you, he said – I'm sorry, not to you, but as was related to you by [A]gent Smith that there was a problem between [Gunter's] mother and Ms. Ferrell, right?

A. Yes.

Q. And that wasn't followed up on?

A. No.

The parties discussed the circumstances surrounding this objection by the State at the motion for a new trial hearing:

[THE STATE]: I think what – that [our] objection at the point was – is – of course, he was then going to [discuss the fact that] Ms. Ferrell was later convicted of killing a person in the same apartment complex, which we all knew that she had been – I think was charged with that at the same time. And I think the point of our objection was he was starting to . . . get into hearsay and [ask about] the contents of that – of that interview. And of course, that would have been the legitimate objection.

THE COURT: Did we not have some conversations before the trial or during breaks outside the jury concerning – I'm thinking that there was something brought to my attention, and I found – I was concerned about getting into irrelevant information involving other homicides.

[THE STATE]: I seem – I think that is correct.

THE COURT: It is – I wish that I had allowed someone to explain the objection or gone into further explanation as to why I had sustained it.

At the conclusion of the hearing on Gunter's motion for a new trial, the trial court determined that there was nothing "in that examination of [A]gent Scott that create[d] a ground for a new trial."

We agree with the State that Gunter waived this issue when he failed to make an offer of proof. See Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably

available to prevent or nullify the harmful effect of an error.”); see also State v. Sims, 45 S.W.3d 1, 15 (Tenn. 2001). The record shows that Gunter failed to make an offer of proof regarding the substance of Agent Scott’s testimony regarding his interview with Ferrell after the trial court sustained the State’s objection. While the State should have stated the basis for its objection during Agent Scott’s testimony, defense counsel was required to make an offer of proof to preserve this issue on appeal. See Tenn. R. Evid. 103(a). Notwithstanding waiver, we conclude that Gunter is not entitled to relief on this issue because this court’s opinion from his first direct appeal shows that he adequately presented the defense theory that Ferrell was the individual responsible for murdering the victim.

B. Tennessee Rule of Evidence 403. Regarding Rule 403, Gunter argues that the trial court erred in admitting Exhibit 10, a close-up photograph of the victim in this case. He claims that this photograph should not have been admitted because there were other photographs of the victim that had been admitted without objection from the defense. Additionally, he asserts that “[t]he test is whether the [photograph] is relevant to some contested issue, and whether that relevance outweighs the unfair prejudicial effect.” In response, the State contends that “[t]he issue is waived because the defendant failed to include in the appellate record the motion to suppress or motion in limine or transcript of any hearing or the order on the motion to suppress the photograph of the victim.” See Tenn. R. App. P. 24(b) (“[T]he appellant shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal.”). Additionally, the State argues, citing State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991), that in the absence of a complete appellate record, this court must presume that there was sufficient evidence to support the trial court’s ruling. Finally, the State contends the trial court did not abuse its discretion in admitting Exhibit 10 because the probative value of the photograph outweighed any unfair prejudice since the photograph depicted the victim’s injuries and assisted the jury in determining whether the victim could have inflicted these injuries herself.

During the motion for a new trial hearing, defense counsel stated that he had filed a pre-trial motion to exclude Exhibit 10, which the trial court denied. He then explained his argument against the photograph’s admission:

Our basis – our grounds [at the pre-trial motion hearing to exclude Exhibit 10] was basically the same as now, that it’s basically a close-up picture of the victim’s face. We feel like any probative value was clearly outweighed by the prejudicial and inflammatory nature of the picture itself, especially in this case. As the proof developed, there was testimony as to injury. There was actually a Styrofoam model that was used. It was introduced by Dr. Murray Marks. I think it was used again when [A]gent Scott was testifying. I may be confused as to that, but at any rate, there was certainly adequate evidence introduced as to the nature of her injuries that was not of [an] inflammatory nature.

We agree that Gunter has waived this issue because of his failure to include the proper transcripts in the appellate record. See Tenn. R. App. P. 24(b). We also agree that in the absence of a complete appellate record, we must presume that there was sufficient evidence to support the trial court's ruling. See Oody, 823 S.W.2d at 559 (citing Vermilye v. State, 584 S.W.2d 226, 230 (Tenn. Crim. App. 1979)). The photograph was particularly important because of Gunter's statement to law enforcement, which said that he hit his mother with the hammer one time after his mother had grievously injured herself by hitting herself in the head with the hammer several times. Notwithstanding waiver, we conclude that the trial court did not abuse its discretion in admitting Exhibit 10 because the probative value of showing the victim's injuries and helping the jury determine whether the victim could have inflicted most of these injuries herself outweighed the prejudicial effect to Gunter. See Tenn. R. Evid. 401 and 403; State v. Banks, 564 S.W.2d 947, 950-51 (Tenn. 1978) (stating that "photographs of the corpse are admissible in murder prosecutions if they are relevant to the issues on trial, notwithstanding their gruesome and horrifying character" and that exclusion is warranted if the prejudicial effect of the photograph substantially outweighs its probative value).

C. Tennessee Rule of Evidence 602. Regarding Rule 602, Gunter contends that the trial court erred in allowing two witnesses to testify about things of which they did not have personal knowledge. He asserts, "The first [occasion] was when the State asked Det. Ledbetter whether or not bloody towels might have been taken with the murderer when they left the apartment . . . ; the second [occasion] was when the trial court allowed Agent Scott to testify as to his belief of whether or not Joseph Gunter was telling him the truth during interviews, and specifically why he disbelieved him." He argues that his convictions should be reversed because pursuant to Tennessee Rule of Criminal Procedure 52(a) the aforementioned testimony affected the result of the trial. See Tenn. R. Crim. P. 52(a) ("No conviction shall be reversed on appeal except for errors that affirmatively appear to have affected the result of the trial on the merits."). In response, the State first argues that Gunter waived these issues because of his failure to cite authority supporting his argument based on Rule 602. See Tenn. Ct. Crim. App. R. 10(b) ("Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court."); Tenn. R. App. P. 27(a)(7) (A brief shall contain "[a]n argument . . . setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on."). Second, the State notes that although Gunter objected at trial to Agent Scott's testimony on the basis that he could not give lay opinion testimony pursuant to Tennessee Rule of Evidence 701, Gunter argues on appeal that the testimony is precluded by Rule 602. See State v. Schiefelbein, 230 S.W.3d 88, 129 (Tenn. Crim. App. 2007) (holding that a party on appeal is bound to the ground of the objection it asserted at trial). Third, the State asserts that if Gunter contends that Officer Scott's testimony was inadmissible as opinion testimony, this argument is unpersuasive since the testimony was a description of the interview, wherein he told Gunter he did not believe his version of the events. Fourth, the State argues that because Rule 602 limits testimony to that within a witness's personal knowledge and because Agent Scott's testimony regarding his interview with Gunter was within his personal knowledge, Gunter has not shown how the trial court abused its discretion.

At trial, defense counsel asked Det. Ledbetter, “W[ere] there any bloody towels where somebody might have washed their hands or bloody paper towels in the trash, anything like that?” He responded, “Not to my recollection, but like I said, I didn’t do the apartment. Agent Scott pretty much collected everything.” Then the State asked Det. Ledbetter about the presence of bloody towels at the crime scene:

[THE STATE]: Now, with regard to any bloody towels that might or might not have been in there, do we have any way of knowing whether or not they had been taken with them when the murderer left?

[DEFENSE COUNSEL]: Your Honor, I object. That calls for speculation.

[THE STATE]: He asked him to do the same thing.

THE COURT: Overrule the objection.

[DEFENSE COUNSEL]: Your Honor, I asked him if there were towels there.

THE COURT: I’ve heard more speculation already than I have all week. I’m going to overrule the objection.

At trial Agent Scott testified about his interview with Gunter. He said that Gunter told him that he had seen his mother, the victim, “hitting herself in the head with a hammer.” Then Gunter told Agent Scott that “he picked up the hammer and struck her one time in the head,” which caused “the hammer [to go] through her skull into her brain.” The State then asked:

Q. Now, at that point did – what did you say to Mr. Gunter about whether you believed him now, after you had listened to him in person?

A. I told him that I didn’t believe him, that I thought it was impossible for an individual to have committed all these separate strikes to the head [himself or herself].

Defense counsel objected to Agent Scott’s testimony on the ground that he was improperly giving his opinion. The trial court overruled the objection, stating that Agent Scott’s response was “just a narrative of the question and answer process” and that defense counsel could cross-examine Agent Scott on this issue.

During defense counsel’s cross-examination of Agent Scott, the following exchange occurred:

Q. You've indicated to the folks on the Jury here that, you know, you didn't believe what he told you; that's why you went back to talk to him because you didn't believe what he'd said, that type thing?

A. Not everything that he said, that's correct.

Q. You believed what he told you when it helped you, but you didn't believe what he said that didn't; is that a pretty fair statement?

A. Well, I believed what he said because certain things that he said could be independently corroborated, such as the fact that a hammer was used to kill her. Only the killer and the police officers and [the victim] knew, and she was dead. He told us about her being struck in the head with a hammer. That's believable.

Q. Okay. Well –

A. It's not believable that the victim struck herself seven times in the head with a hammer. I did not believe his – I think that an – an untruthful person will tell you bits of the truth and weave it with all lies, and it's natural for a person that's untruthful to try to minimize what they [have] done. It would be hard to admit that yes, I bludgeoned my mother to death, I struck her seven times as hard as I could with a hammer, but it's easier to give an alternate –

Q. Especially if you didn't do it, right?

A. If I didn't do it, I would not –

Q. Especially if you didn't do it.

THE COURT: Hold on a second.

A. – admit to anything.

[DEFENSE COUNSEL]: Your Honor, I'd ask that the witness respond to the question.

THE COURT: Well, no. Now, [defense counsel], you asked for that. You asked that question. He's now explaining. Now, move on.

We agree that Gunter waived these issues because of his failure to cite authority supporting his argument based on Rule 602. See Tenn. Ct. Crim. App. R. 10(b); Tenn. R. App. P. 27(a)(7). Furthermore, we agree that a party on appeal is bound to the ground of the objection it asserted at trial. See Schiefelbein, 230 S.W.3d at 129. Notwithstanding waiver, we conclude after reviewing

these two pieces of testimony that the trial court did not abuse its discretion in admitting them. Furthermore, the evidence of Gunter's guilt was overwhelming, and we find no errors "that affirmatively appear to have affected the result of the trial on the merits." See Tenn. R. Crim. P. 52(a). Accordingly, Gunter is not entitled to relief on this issue.

D. Trial Court's Negative Comments. Gunter claims that several negative comments by the trial court prevented him from receiving a fair trial and that these comments require a reversal of his convictions. In response, the State initially argues that Gunter has waived this issue because he fails to cite to any authority to support his arguments. See Tenn. Ct. Crim. App. R. 10(b) ("Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court."); Tenn. R. App. P. 27(a)(7) (A brief shall contain "[a]n argument . . . setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on."). Second, the State asserts that Gunter is not entitled to relief because the comments of the trial court did not result in "an unjust disposition of the case." See State v. Jerry Douglas Franklin, No. 01C01-9510-CR-00348, 1997 WL 83772, at *14 (Tenn. Crim. App., at Nashville, Feb. 28, 1997) (quoting State v. Baker, 785 S.W.2d 132, 135 (Tenn. Crim. App. 1989)).

We agree that Gunter waived these issues because of his failure to cite authority supporting his argument. See Tenn. Ct. Crim. App. R. 10(b); Tenn. R. App. P. 27(a)(7). Regarding comments by a trial court, the Tennessee Supreme Court has stated:

It is well-established that a trial judge has broad discretion in controlling the course and conduct of the trial, and that in exercising that discretion, he or she must be careful not to express any thought that might lead the jury to infer that the judge is in favor of or against the defendant in a criminal trial.

State v. Cazes, 875 S.W.2d 253, 260 (Tenn. 1994) (citing State v. Caughron, 855 S.W.2d 526, 536 (Tenn. 1993)). "The issue to be determined is not the propriety of the judicial conduct of the trial judge, but whether he committed an error which resulted in an unjust disposition of the case." State v. Baker, 785 S.W.2d 132, 135 (Tenn. Crim. App. 1990) (citing State v. Hawk, 688 S.W.2d 467, 472 (Tenn. Crim. App. 1985)). Here, the record indicates that the trial court made these comments to direct the course and conduct of the trial. Furthermore, the trial court's comments were aimed at both the defense counsel and the State. After reviewing the record and notwithstanding waiver, we conclude that the trial court's comments did not result in "an unjust disposition of the case." See Baker, 785 S.W.2d at 135. Accordingly, Gunter is not entitled to relief on this issue.

III. Failure to Disclose Exculpatory Evidence. Gunter argues that his convictions should be reversed because he was denied his Fourteenth Amendment right to substantive due process because the State failed to disclose the discovery of items following his trial that had been removed from the victim's apartment and then destroyed these items before giving him the opportunity to examine them. He also claims that this newly discovered evidence supports his defense that some

other person robbed and murdered his mother. In response, the State contends that Gunter waived this issue because he failed to cite to authority supporting his argument. See Tenn. Ct. Crim. App. R. 10(b) (“Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.”); Tenn. R. App. P. 27(a)(7) (A brief shall contain “[a]n argument . . . setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on.”). Second, the State argues that Gunter has not proven that it failed to disclose this new and allegedly exculpatory evidence. Third, the State asserts that Gunter failed to demonstrate “(1) reasonable diligence in seeking the newly discovered evidence; (2) materiality of the evidence; and (3) that the evidence will likely change the result of the trial.” See State v. Nichols, 877 S.W.2d 722, 737 (Tenn. 1994) (citing State v. Goswick, 656 S.W.2d 355, 358-60 (Tenn. 1983)). Fourth, the State argues that Gunter has failed to show that the trial court abused its discretion in denying his motion for a new trial on this issue.

During the motion for a new trial hearing, Deputy Sheriff Jeff Wright testified that on January 1, 2003, an individual found a purse and some other items on the side of Hoodtown Road. The things scattered beside the road included some clothing, a man’s watch, “a bunch of junk jewelry” worn by teenagers, and a pill bottle with the victim’s name on the outside. Deputy Wright stated that it was an old prescription bottle, and the various pills inside did not match the prescription label. No one ever claimed the purse and its contents. Deputy Wright said that Jimmy Eustacia (“Stacy”) Gunter, Joseph Gunter’s brother, came to look at the items several weeks after they were discovered. Stacy Gunter was interested in the fact that his mother’s prescription bottle was found in that purse. Deputy Wright acknowledged that the evidence discovered on January 1, 2003, had been destroyed.

Stacy Gunter testified that his brother was the defendant in this case. He stated that his mother died on February 2, 2001, and he learned sometime after January 1, 2003, that the police had discovered one of his mother’s prescription bottles. He said that his aunts put his mother’s belongings into boxes, and he and his brother Lucus divided up the boxes. He later believed that some of his girlfriend’s family and friends who were addicted to drugs had been “plundering through [the boxes of his mother’s belongings].” He said that it was possible that the pill bottle discovered on January 1, 2003, came from the items stored in his attic. Stacy Gunter said that he found out about the items discovered by the police when someone that had been in jail told his father that the police had discovered some of the victim’s belongings on Hoodtown Road. He stated that the discovery of the pill bottle “[did not] change his opinion about the case” regarding whether someone other than his brother was responsible for his mother’s death.

The trial court ruled that the discovery of this evidence nearly one year after Gunter’s trial did not warrant a new trial. The court said, “[W]e’re really addressing errors with [Gunter’s] trial” and opined that this issue should have been raised in a writ of error coram nobis.

We agree with the State that Gunter waived this issue because of his failure to cite authority supporting his argument. See Tenn. Ct. Crim. App. R. 10(b); Tenn. R. App. P. 27(a)(7). Notwithstanding waiver, we agree with the State that Gunter failed to meet the three requirements in State v. Nichols, most notably the two requirements regarding the materiality of the evidence and the likelihood that the evidence would have changed the outcome of the trial. See Nichols, 877 S.W.2d at 737. Additionally, “[w]hether the trial court grants or denies a new trial on the basis of newly discovered evidence rests within the sound discretion of the trial judge.” State v. Caldwell, 977 S.W.2d 110, 117 (Tenn. Crim. App. 1997) (citing Hawkins v. State, 417 S.W.2d 774, 778 (Tenn. 1967)). The trial court did not abuse its discretion in denying Gunter a new trial based on this evidence. Accordingly, Gunter is not entitled to relief on this issue.

IV. Failure to Test Murder Weapon for Fingerprints. Gunter contends that his convictions should be reversed because he was denied his Fourteenth Amendment right to substantive due process when the State failed to test the murder weapon or other items found at the scene for fingerprints. He further claims that he does not have the resources to conduct these tests and that the State’s failure to conduct tests prejudiced him by preventing him from presenting a defense. In response, the State argues that Gunter has waived this issue for failure to cite to authority supporting his argument. See Tenn. Ct. Crim. App. R. 10(b) (“Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.”); Tenn. R. App. P. 27(a)(7) (A brief shall contain “[a]n argument . . . setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on.”). Additionally, the State contends that Gunter has failed to show how he was denied due process when the State decided not to test the murder weapon. It asserts that Tennessee Rule of Criminal Procedure 16 requires only that the State preserve the evidence and allow the defendant to inspect the evidence and receive a copy of any test results. It further claims that Gunter could have tested the hammer for fingerprints, but the State had no obligation to do so. Finally, the State contends that Agent Scott’s testimony at trial made it clear that law enforcement officers did not test for fingerprints on the murder weapon because Gunter could have touched the hammer at any point and because Gunter had already given a statement admitting that he had hit the victim with the hammer.

At trial, the State asked Agent Scott about the failure to test certain items, including the murder weapon for fingerprints:

Q. Now, would it have accomplished anything, [A]gent Scott, to have tested all these things to see if they had the fingerprints of Joseph Gunter on there for the purpose of determining whether or not he had murdered his mother?

A. No.

Q. Why is that?

- A. Because he could have placed those fingerprints on any of those items at any time prior – days, weeks prior to the murder. He may have handled those things prior to actually committing the murder rather than after bludgeoning his mother to death. And based on his admission to handling the hammer, to striking his mother, that’s the reason we didn’t try to get latent prints off some of the items.

During the motion for a new trial hearing, the trial court and defense counsel discussed this issue:

THE COURT: Let me make sure I understand. You are saying that the defendant was entitled to forensic help and didn’t get it?

[DEFENSE COUNSEL]: And just in its most basic form, I guess so.

THE COURT: Was that requested? It wasn’t re – was it?

[DEFENSE COUNSEL]: No, there was no request for that type of –

THE COURT: All right.

[DEFENSE COUNSEL]: – work to be done, and I’m trying to – I’ve been trying to think. I don’t recall any kind of specific objection. And of course, I know the Court is aware, I mean, in this Motion for New Trial, we’re to raise any issue that we intend to try to use on appeal, and this is – probably would fall in the category of something that would be looked at by an Appellate Court more as a constitutional issue, I mean. And the reason that this has not been –

THE COURT: . . . I’m finding that that particular issue is not relevant in a motion for new trial. It does have some bearing, I believe. It’s more of a due process type argument. And it might address itself to a post-conviction relief type thing at some point, but I don’t know.

But at this particular point, I don’t see any evidence that an issue was raised at trial concerning this testimony or this substance and the Court [erred] on a ruling.

We agree with the State that Gunter waived this issue because of his failure to cite authority supporting his argument and because of his erroneous citation to the record regarding this issue. See Tenn. Ct. Crim. App. R. 10(b); Tenn. R. App. P. 27(a)(7). Notwithstanding waiver, we conclude that the State was under no obligation to test the murder weapon or other items and that Gunter has failed to provide any proof that he was prejudiced by the State’s failure to conduct testing. We agree with the State that no testing was necessary in light of Gunter’s admission that he struck his mother

with the hammer. Furthermore, the proof of Gunter's guilt at trial was overwhelming. Accordingly, Gunter is not entitled to relief on this issue.

V. Cumulative Effect of the Errors. Gunter argues that “[i]n the event this Court finds that none of the aforementioned errors standing alone should result in a new, fair trial in this case, the court is urged to consider the cumulative effect of these errors and consider the impact of all these circumstances on the jury.” He contends that given the totality of the circumstances in this case, his convictions should be reversed because he did not receive a fair trial as guaranteed by the Sixth Amendment. In response, the State argues that for the reasons already stated, the trial court did not err regarding these issues; therefore, there is no cumulative effect of error that violated Gunter's constitutional rights.

We agree with the State. Because we have already determined that Gunter is not entitled to relief on any of the previous issues, we conclude that there is no cumulative error that affected his right to a fair trial under the Sixth Amendment.

CONCLUSION

Upon review of the record, we conclude that Gunter was not denied a fair trial because of issues with two different jurors, because of the trial court's rulings on certain evidentiary issues, or because of the trial court's comments during the trial. Additionally, we conclude that he was not denied due process by the State's failure to disclose and preserve evidence discovered after his trial or by the State's failure to test the murder weapon and other items for fingerprints. Furthermore, we conclude that Gunter was not denied his right to a fair trial because of the cumulative effect of the alleged errors in this case. The judgments of the trial court are affirmed.

CAMILLE R. McMULLEN, JUDGE